

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GEORGE VIGIL

(b) County of Residence of First Listed Plaintiff Rio Arriba
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Richard A. Sandoval, Sandoval Firm, 1442-D S. St. Francis Drive, Santa Fe, NM 87505 (505) 795-7790

DEFENDANTS

JOSEPH AQUINO and RIO ARRIBA SHERIFF'S OFFICE

County of Residence of First Listed Defendant Rio Arriba
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|--|---|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. Section 1983

Brief description of cause:
 False arrest, excessive force

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
 07/22/2020

SIGNATURE OF ATTORNEY OF RECORD

D. A. R. , Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GEORGE VIGIL,

Plaintiff,

vs.

Case No.

JOSEPH AQUINO and
RIO ARRIBA SHERIFF'S OFFICE,

Defendants.

**COMPLAINT FOR VIOLATION OF CONSTITUTIONAL RIGHTS, NEGLIGENCE
AND PUNITIVE DAMAGES
IN VIOLATION OF FEDERAL AND STATE LAW**

COMES NOW the Plaintiff, GEORGE VIGIL, by and through his attorneys of record, SANDOVAL FIRM (Richard A. Sandoval) and hereby brings this Complaint under 42 U.S.C. § 1983, the Eighth and Fourteenth Amendments of the New Mexico and United States Constitutions, the New Mexico Tort Claims Act. As grounds, Plaintiff states:

1. This Court has jurisdiction over the subject matter of Plaintiff's Complaint under 28 U.S.C. § 1331, 42 U.S.C. §§ 1983 and 1988, the United States Constitution Fourth Amendment, the New Mexico Tort Claims Act, N.M.Stat. Ann. § 41-4-1, et seq., and Article II, § 10, of the New Mexico Constitution, the law of negligence under New Mexico law.

2. The actions complained of in this Complaint occurred within the State of New Mexico and therefore venue is proper in this judicial district.

3. The state law actions complained of occurred within two years of the date of filing of this lawsuit, on or about March 2, 2019.

PARTIES

4. The Plaintiff is a resident of San Juan, Rio Arriba County, New Mexico.
5. Upon information and belief, defendant Joseph Aquino is a resident of Espanola, New Mexico.
6. Joseph Aquino was at all relevant times a deputy with the Rio Arriba County Sheriff's office.
7. Defendants Rio Arriba Sheriff's Office are entities of the State of New Mexico.
8. All Defendants are "persons" within the meaning of 42 U.S.C. § 1983.

FACTS COMMON TO ALL COUNTS

9. Plaintiff reincorporates and re-alleges each and every allegation contained in this Complaint, whether set forth above or below, as if fully set forth herein.
10. On or about, March 2, 2019, Plaintiff was an employee of the Family Dollar located in Chimayo, New Mexico and was in his lawful place of business.
11. Plaintiff was observing Deputy Aquino from inside his workplace.
12. Deputy Aquino had no reasonable suspicion to believe that Plaintiff had committed any criminal offense.
13. Deputy Aquino entered Plaintiff's workplace and approached him in an aggressive manner and struck Plaintiff on his back.
14. This battery against Plaintiff was not intended to search for weapons.
15. Deputy Aquino assaulted, battered and falsely imprisoned Plaintiff until he was released from custody a few hours later.
16. Deputy Aquino was recently indicted by the Santa Fe District Attorney's office regarding this matter.

17. Deputy Aquino admitted in writing that his conduct was in violation of law for the purpose of participating in a pre-trial diversion program.

COUNT I
EXCESSIVE FORCE
(JOSEPH AQUINO)

18. Plaintiff reincorporates and re-alleges each and every allegation contained in this Complaint, whether set forth above or below, as if fully set forth herein.

19. In violation of 42 U.S.C. §1983, Defendant deprived Plaintiff of his civil rights by using excessive force.

20. Plaintiff's injuries were proximately caused by the excessive force of Defendant Aquino.

21. That the Defendants are liable to Plaintiff for such damages and injuries as well as the Constitutional deprivation suffered by Plaintiff.

22. As a result of the Constitutional deprivations suffered by Plaintiff at the hands of the Defendants, Plaintiff is entitled to damages in an amount not presently determinable, but to be proven at the time of trial.

23. Pursuant to 42 U.S.C. §1988, Plaintiff is entitled to an award of attorney's fees for defendant's violation of 42 U.S.C. §1983.

COUNT II
STATE LAW TORT CLAIMS (JOSEPH AQUINO)

24. Plaintiff reincorporates and re-alleges each and every allegation contained in this Complaint, whether set forth above or below, as if fully set forth herein.

25. Defendant Aquino intentionally and negligently caused the battery, assault, false arrest, false imprisonment and deprivation of Federal and State constitutional rights of Plaintiff.

26. Defendant Aquino was acting within the scope of his duties as law enforcement

defendants when he committed these torts against Plaintiff.

27. Defendant Aquino had no reasonable suspicion to believe that Plaintiff had committed any criminal offense.

28. The tortious actions of Defendant Aquino proximately caused Plaintiff's damages and injuries.

COUNT III
NEGLIGENT HIRING, TRAINING, SUPERVISION, AND RETENTION (RIO ARRIBA COUNTY SHERIFF'S OFFICE)

29. Plaintiff reincorporates and re-alleges each and every allegation contained in this Complaint, whether set forth above or below, as if fully set forth herein.

30. The Defendant Rio Arriba County Sheriff's Office has a duty to properly supervise, educate and train its police officers and law enforcement employees relating to handling a crisis management situation and the proper use of force in a crisis management situation.

31. The Defendant Rio Arriba County Sheriff's Office has failed to properly supervise, educate and train its police officers and law enforcement employees relating to handling a crisis management situation and the proper use of force in a crisis management situation.

32. The County's failure to properly train and supervise its police officers and law enforcement employees in such a manner as alleged above directly caused the injuries to Plaintiff.

33. The Defendant Rio Arriba County Sheriff's Office is liable for damages caused by the negligence of its employees while working within the scope of their employment, an amount not presently determinable, but to be proven at the time of trial.

34. The Defendant Rio Arriba County Sheriff's Office is liable for the injuries of Plaintiff caused by the negligence of Defendant Aquino.

COUNT IV
ILLEGAL SEIZURE AND ARREST IN VIOLATION OF THE FOURTH AMENDMENT
(JOSEPH AQUINO)

35. Plaintiff reincorporates and re-alleges each and every allegation contained in this Complaint, whether set forth above or below, as if fully set forth herein.

36. At all times material hereto, Plaintiff had the constitutional right to be free from unlawful seizure, arrest, and detention.

37. Defendant Aquino caused Plaintiff to be seized, arrested and detained without probable cause to believe he had committed a crime and without any other reasonable and legal ground for an arrest.

38. Plaintiff's seizure, arrest and incarceration was without a justifiable basis and was objectively unreasonable, intentional, willful, wanton, and in gross and reckless disregard of his rights under the Fourth and Fourteenth Amendments to the United States Constitution.

39. The unlawful seizure, arrest and incarceration of Plaintiff proximately caused his damages.

40. Defendant Aquino failed to exercise his duty to ensure Plaintiff's right to be free from illegal seizure, arrest, and detention was not violated and his actions were not objectively reasonable.

41. Defendant Aquino's actions were intentional, willful, wanton and in gross and reckless disregard of Plaintiff's rights under the federal constitution.

COUNT V
UNOFFICIAL POLICY CUSTOM AND/OR PRACTICE IN VIOLATION OF 42
U.S.C. § 1983 (RIO ARriba COUNTY SHERIFF'S OFFICE)

42. Plaintiff reincorporates and re-alleges each and every allegation contained in this Complaint, whether set forth above or below, as if fully set forth herein.

43. Defendant Rio Arriba County Sheriff's Office's official and unofficial policies and customs encouraged, caused, allowed, and or enabled Defendant Aquino to violate Plaintiff's constitutional and state rights without fear of discipline for those violations.

44. Failure to properly investigate and discipline officers who are accused of unlawful conduct caused Plaintiff's constitutional rights to be violated.

45. There is an obvious need for Rio Arriba County Sheriff's office to train all its employees on First and Fourth Amendment rights. Defendant Rio Arriba County Sheriff's Office has demonstrated a policy of deliberate indifference to such civil rights violations.

46. Defendant Rio Arriba County Sheriff's Office's callous, reckless, wanton, and malicious actions under color of state law before, during and after this loss, has caused Plaintiff to suffer and continue to suffer the damages Plaintiff has described.

COUNT VI
PUNITIVE DAMAGES
(ALL DEFENDANTS)

47. Plaintiff reincorporates and re-alleges each and every allegation contained in this Complaint, whether set forth above or below, as if fully set forth herein.

48. The acts and omissions complained of in the Causes of Action stated above are, upon information and belief, believed to be of such an egregious nature, in reckless, wanton and total disregard to the rights of Plaintiff, that in addition to actual damages ascertained and demonstrated by a preponderance of the evidence, that punitive damages or exemplary damages to punish and deter this type of act from occurring in the future may well be appropriate.

JURY DEMAND

49. Plaintiff demands a jury trial of all issues so triable and requests that an advisory jury be empaneled, should the court deem it appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that he be granted the following relief pursuant to his complaint:

- A. Award Plaintiff compensatory damages, in an amount to be proven at trial;
- B. Award Plaintiff special damages, in an amount to be proven at trial;
- C. Award Plaintiff punitive damages in an amount to be proven at trial;
- D. Award Plaintiff pre- and post-judgment interest, as allowed by law;
- E. Award Plaintiff his costs and reasonable attorneys' fees incurred in prosecuting this action;
- F. Set this matter for trial by jury; and
- G. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

SANDOVAL FIRM

/s/ Richard A. Sandoval

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